IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13884 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHERUSINH VIJAYSINH CHAUHAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 13884 of 1993

MR AM RAVAL for Petitioner No. 1

Mr. LR Poojari, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 01/04/2004

ORAL JUDGEMENT

The petitioner who was having licence for selling kerosene had preferred the present Special Civil Application under Article 227 of the Constitution of India challenging not only the show cause notice dated 7.11.1992 proposing to cancel the licence under the provisions of Essential Commodities Act but has also

challenged the order passed by all the authorities below by which the licence which was granted in his favour for retail sale of kerosene has been cancelled and 1920 litres of kerosene has been confiscated.

2. The petitioner was granted licence for selling kerosene under the provisions of the Gujarat Essential Articles (Licence, Control and Stock Declaration) Order, 1981 by the Mamlatdar at Ahmedabad and the said licence was renewed upto 31.12.1992. That on or about 17.10.1992, the Civil Supply Inspector inspected the place of the petitioner and on the basis of the said inspection had seized 1920 litres of kerosene by preparing seizure Panchnama dated 17.10.1993.

3. That on the basis of the aforesaid inspection carried out by the Civil Supplies Inspector on 17.10.1992 the petitioner was served with a show cause notice dated 7.11.1992 by which the petitioner was called upon to show cause why the licence which was issued in favour of the petitioner for retail sale of kerosene should not be cancelled on the ground that the petitioner has not kept bill book, that though there is instruction of the State Government to sell 5 litres of kerosene fortnightly, he has sold 10 litres of kerosene at a time on most of the occasions. In the show cause notice, another charge was that except Wednesday and Saturday the petitioner was not selling kerosene and though on other days the stock of kerosene was there he was not selling the kerosene. Another charge was that the Stock Board was written in English and that another charge was that though he can be allotted 4000 litres of kerosene every month he was lifting only 3500 litres of kerosene. That the petitioner replied to the said show cause notice and has submitted that he has sent the bill book for printing. He has also submitted that he is selling 10 litres of kerosene at a time which is in consonance with the Government Circular dated 29.1.1991 and therefore there is no irregularity committed by him. He has also submitted that on other days other than Wednesday and Saturday he is selling the kerosene and as he is not knowing Gujarati, in the Stock Book entries are made in English. After considering the reply submitted by the petitioner the District Supply Officer, Kheda by his judgment and order dated 22.11.1992 has passed an order cancelling the licence which was in favour of the petitioner for selling kerosene and also forfeiting the deposit and for confiscation of the kerosene which was seized by holding that earlier also there was a case against the petitioner and though he had given assurance that he will be selling kerosene on all the days he was not selling kerosene on all the days and the said fact

had also been admitted by him in his written reply.

4. That being aggrieved and dissatisfied with the order passed by the D.S.O., Kheda dated 22.12.1992 in cancelling the licence for selling and forfeiting the deposit, the petitioner had preferred appeal before the Collector, Kheda who by his judgment and order dated 18.2.1993 has also dismissed the appeal confirming the order passed by the D.S.O. dated 22.12.1992.

5. That being aggrieved and dissatisfied with the judgment and order dated 18.2.1993 passed by the Collector, Kheda passed in Appeal No. 8 of 1993 in confirming the order passed by the DSO, Kheda dated 22.12.1992 in cancelling the licence and forfeiting the deposit the petitioner preferred revision application before the State Government and the State Government by its judgment and order dated 8.7.1993 dismissed the said revision application confirming the order passed by both the authorities below.

6. Being aggrieved and dissatisfied with the said judgment and order dated 8.7.1993 passed by the State, the petitioner had preferred Special Civil Application No. 7885 of 1993 before this Court which came up for hearing before this Court (Coram: S.D. Dave, J., as he then was), and this Court by order dated 14.9.1993 was pleased to dispose of the said Special Civil Application as the learned advocate appearing for the petitioner had requested that she may be permitted to raise all the contentions which were raised in the petition by making proper representation before the Deputy Secretary,Civil Supplies, Gandhinagar, by granting liberty to the petitioner to approach the authority with a representation raising all the contentions which the learned counsel wanted to raise in the said Special Civil Application.

7. That, thereafter, the Deputy Secretary, Food and Civil Supplies, State of Gujarat, by his judgment and order dated 3.11.1993 considering the representation submitted by the petitioner had dismissed the said revision application confirming the order passed by the authorities below by holding that the contention of the petitioner that he was selling 10 litres of kerosene at a time on the basis of the Government Circular of 1991 has no substance as the said Circular is already withdrawn and the petitioner had wrongly relied upon the same. That the petitioner is not selling the kerosene on all the days and is selling kerosene only on Wednesday and Saturday and has found that out of 5 charges, 3 charges

are proved against him which are serious in nature and therefore rejected the revision application.

8. That being aggrieved and dissatisfied with the order passed by the State Government in rejecting the revision application and confirming the order passed by all the authorities below in cancelling the licence which was granted to the petitioner to sell the kerosene, the present Special Civil Application is filed by the petitioner under Article 227 of the Constitution of India.

9. Shri AM Raval, learned advocate appearing for the petitioner has strongly challenged the judgment and order passed by all the authorities below which the licence which was granted in favour of the petitioner for supplying kerosene has been cancelled and the deposit has been forfeited. It is strongly contended on behalf of the petitioner that the irregularities which are alleged against the petitioner are said to be technical in nature and there are no serious allegations against the petitioner and therefore he has submitted that instead of imposing the harsh punishment of cancelling the licence, the authorities should have imposed lesser penalty either of suspension of the licence for a particular period and/or forfeiting the deposit only.

10. On the other hand, learned AGP, Shri Poojari, appearing on behalf of the respondents, has supported the orders passed by all the authorities below. He has submitted that out of 5 charges, 3 charges are proved against the petitioner which are serious in nature. It is an admitted position that the petitioner has not kept the bill book. It is also contended that the petitioner has also admitted that he is not selling kerosene every day and is selling only on Wednesday and Saturday. He has also submitted that earlier also there was a case against the petitioner but the petitioner has not improved himself and again indulged into the same irregularity and therefore the authorities were justified in cancelling the licence which was in favour of the petitioner for selling kerosene.

11. I have heard the learned advocates appearing for the parties. Out of 5 charges, 3 charges are proved against the petitioner. Though the petitioner was supposed to sell 5 litres of kerosene at a time, it was found that he was selling 10 litres of kerosene at a time. To justify the same, he has submitted that the same was permissible as per the Government Resolution dated 29.1.1991. It is found by the authorities below that the Circular upon which reliance was placed by the

petitioner was already withdrawn and thus it seems that the petitioner has tried to mislead the authorities by relying upon the Circular which was already withdrawn. It cannot be believed that the petitioner was not aware of the Circular which was withdrawn as the said Circular was with regard to selling the kerosene. Thus, when the petitioner has tried to mislead the authorities, no sympathy should be shown in favour of the petitioner.

12. It is also found from the record that the petitioner was selling the kerosene only on Wednesday and Saturday. Earlier also, there was a case against the petitioner in which the petitioner had given an assurance that he will be getting the depo opened regularly and will distribute the kerosene. Inspite of that, it was found that he was selling the kerosene only on Wednesday and Saturday and the said fact is also admitted by him. By not selling the kerosene to the public it seems the very purpose for issuance of licence to sell the kerosene has been frustrated. The kerosene is meant for poor persons. If the poor people are not getting supply of kerosene, they will be facing difficulties. As it is found that the petitioner was not distributing the kerosene on all the days and not even getting the depo opened regularly, the very purpose for which the licence was issued to sell the kerosene was frustrated. Under the circumstances, considering the fact that earlier also there was a case against the petitioner, the punishment imposed by all the authorities below in cancelling the licence and forfeiting the security deposit of Rs. 750 cannot be said to be in any way illegal which calls for interference of this Court exercising the power under Article 227 of the Constitution of India. Even otherwise, there is a finding of fact given by all the authorities below by holding that the petitioner was guilty for the irregularities committed by him and this Court cannot sit as an appellate authority against those orders which are passed after appreciating the evidence on record. This Court will not be justified in disturbing the finding of fact recorded by all the authorities below which was on the basis of the evidence on record,in exercise of the powers under Article 227 of the Constitution of India.

13. Under the circumstances, looking to the facts of the case, there is no question of imposing lesser punishment. The present Special Civil Application is, therefore, required to be dismissed and is hereby dismissed. Rule is discharged with no order as to costs. Ad-interim relief granted earlier stands vacated forthwith.

rmr. [M.R. Shah, J.]